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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
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12 Plaintiff,
13
14 v.
AMADO ESCOBEDO, JR. and
DOROTEA GONZALEZ
15 Defendants.

CASE NO. 1:21-CR-00222-DAD-BAM

AMENDED STIPULATION REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; FINDINGS AND ORDER

DATE: June 8, 2022
TIME: 1:00 pm
COURT: Hon. Barbara A. McAuliffe

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17 This case is set for a status conference on June 8, 2022. The parties stipulate and request the
18 Court to order that the status conference be continued until September 28, 2022. On May 13, 2020, this
19 Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until
20 further notice.” Under General Order 618, a judge “may exercise his or her authority to continue
21 matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611
22 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s
23 discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-
24 by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the
25 request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
26 will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and
27 previous General Orders were entered to address public health concerns related to COVID-19.

28 Although the General Orders address the district-wide health concern, the Supreme Court has

1 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 2 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 4 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 7 or in writing”).

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 10 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 12 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 13 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 15 and the defendant in a speedy trial.” *Id.*

16 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 17 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 18 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 19 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 20 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 21 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 22 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 23 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 24 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

25 In light of the societal context created by the foregoing, this Court should consider the following
 26 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 27 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date

28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.

for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through defendants’ counsel of record, hereby stipulate as follows:

1. The parties need additional time to further investigate/explore matters related to resolving the case or setting a trial date.

2. By this stipulation, defendants now move to continue the status conference, and to exclude time from June 8, 2022 to September 28, 2022 under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) .The government has represented that the discovery associated with this case includes investigative reports, and related documents in electronic form. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) The government does not object to the continuance.

c) In addition to the public health concerns cited by the General Orders and declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because:

- Defendant’s ability to prepare for trial or a plea has been inhibited by the public health emergency;
- Defendant needs additional time to review discovery, and conduct additional investigation; and
- The parties need additional time to investigate/explore matters related to proceeding via plea or trial.

d) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the

Cal. March 18, 2020).

original date prescribed by the Speedy Trial Act.

e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of June 1, 2022 to September 28, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: June 7, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ KIMBERLY SANCHEZ
KIMBERLY SANCHEZ
Assistant United States Attorney

Dated: June 7, 2022

/s/ MONICA BERMUDEZ
MONICA BERMUDEZ
Counsel for Defendant
Amado Escobedo, Jr.

Dated: June 7, 2022

/s/ PETER JONES
PETER JONES
Counsel for Defendant
Doroteo Gonzalez

ORDER

IT IS SO ORDERED that the status conference is continued from June 8, 2022, to **September 28, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv). The parties are cautioned that the Court may deny any future requests to continue which are submitted after the filing deadline.

IT IS SO ORDERED.

Dated: **June 7, 2022**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE